

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-1055

To be argued by
IRVING COHEN

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

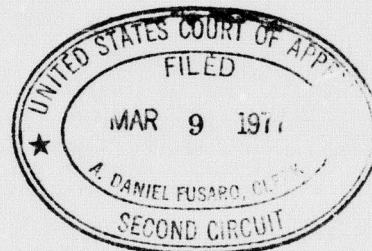
JAMES DI GIOVANNI,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT

IRVING COHEN
Attorney for Defendant-
Appellant
299 Broadway
New York, New York 10007
(212) 233-3330



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UNITED STATES OF AMERICA,

-against-

Defendant-Appellant.

DOCKET NO. 77-1055

Whether the denial of Rule 35 Relief because the defendant refused to testify against other defendants was reversible error, since the Court ignored the defendant's assertion that agents had promised he would not have to testify.

STATEMENT PURSUANT TO RULE 28 (a) (3)

A. PRELIMINARY STATEMENT

This is an appeal from an Order of the United States District Court for the Eastern District of New York (Neaher, J.), rendered on December 8, 1976, denying defendant-appellant's motion, pursuant to Rule 35, F.R. Crim. P., for a reduction of sentence.

B. STATEMENT OF FACTS

On March 29, 1975, the defendant was arrested for possession of one pound of cocaine which he was about to deliver to undercover agents of the New York Task Force. Following his arrest, he told the agents how he had obtained the cocaine and described the persons who had furnished him the drugs. Acting in cooperation with the agents, the defendant telephoned his suppliers and arranged for a meeting at which more cocaine was to be delivered. As a result, Stephan and Stanley Lifschitz were arrested. (Assistant United States Attorney Schall's Letter of July 9, 1976 to Judge Neaher, Pp. 1 and 2). The defendant declined to testify against the Lifschitz brothers, and the indictment against them was dismissed.

Subsequently, the defendant plead guilty to three counts of the indictment. Prior to sentencing, the assistant United States Attorney informed the sentencing judge of the defendant's cooperation and his subsequent refusal to testify.

On July 23, 1976 the defendant appeared for sentencing. His attorney stated that the defendant was in his late twenties. At the time the offense was committed, the defendant had a narcotic habit. Since his arrest he had detoxified, ceased using drugs, and obtained a college degree. The brother who was arrested with the defendant and was his codefendant had been sentenced to imprisonment for six months. (Sentencing minutes of July 23, 1976, Pp. 5-6). The defendant's father asserted that the defendant had been working and was drug free. (Sentencing minutes July 23, 1976 Pp. 11-12). Defense counsel further asserted that the defendant did not have a serious criminal record.

The court indicated that after reading the government's letter, it concluded that the defendant had changed his mind about cooperating:

"Now, the government here has written a letter to the Court indicating a complete change of mind on your part to enable the Government to do something about these so-called bigger dealers. I presume they are, whom you know, and whom you could aid the government to do something about." (Sentencing Minutes of July 23, 1976 P. 14).

The court further stated that because of the defendant's unwarranted reluctance to assist the Government "...I feel that I must impose on you a more serious sentence."

Whereupon the defendant was sentenced to concurrent terms of five years imprisonment with a special parole term of three years. The court further ordered that the defendant

be eligible for parole at the expiration of one year.

Finally, the judge stated that if the defendant changed his mind about helping the government, he could make an application to the court for a reduction of sentence. (Sentencing Minutes of July 23, 1976 Pp. 17-18).

The defendant, still unwilling to testify, applied for Rule 35 relief.

In a letter to the sentencing judge annexed to the Rule 35 motion, James Di Giovanni stated the agents promised him that he would not have to testify in court and that his cooperation would be kept secret. Despite this assurance the government later informed him that he would be obliged to testify at a grand jury and at trial.

On two occasions when he went to visit his lawyers, the Lifschitz brothers and another person met the defendant and told him that they were angry at him for giving the agents information. If the defendant helped to convict them, they would retaliate against both the defendant and his wife. They informed him that they knew his address both in Arizona and New York.

The government promised to protect the defendant if he testified by helping him to relocate in another part of the country with a new name. The defendant, however, did not wish to spend the rest of his life as a fugitive living in fear, and he declined to testify.

By letter dated November 30, 1976, the assistant United

States attorney responded to two factual allegations in James Di Giovanni's letter. However, the government's letter did not comment on the defendant's assertion that he had been promised that he would not have to testify. On December 9, 1976 the Rule 35 motion was denied.

ARGUMENT

POINT I

THE DENIAL OF RULE 35 RELIEF WAS REVERSIBLE ERROR, FOR THE COURT FAILED TO DETERMINE WHETHER IN FACT HE HAD BEEN PROMISED THAT HE WOULD NOT HAVE TO TESTIFY

The defendant's refusal to testify against his former confederates led to the imposition of a more severe sentence and the denial of Rule 35 relief. The propriety of the practice of giving noncooperating defendants heavier sentences has divided the courts. See United States v. Seveig, 454 F. 2d 181 (2d Cir. 1972); United States v. Vermeulen, 436 F. 2d 72 (2d Cir. 1970); United States v. Chaidez-Castro, 430 F. 2d 766 (7th Cir. 1970), approving the practice. Contra: United States v. Rogers, 504 F. 2d 1079 (5th Cir. 1974), disapproving the imposition of more severe sentences. All of these decisions analyze the question in terms of the privilege against self incrimination.

The instant case, however, presents the question from an entirely different perspective. The question is not whether as a general matter a noncooperating defendant may be subjected to severer penalties, but whether under the circumstances of this case it was proper for the court to penalize the defendant.

The defendant and his attorney alleged in their papers in support of the Rule 35 motion that government agents had originally promised the defendant that his cooperation would

be kept secret and that he would not be required to testify. That allegation was not answered by the government in its letter of November 30, 1976. The defendant did cooperate fully up to the point where he would have to testify. If it is true that agents did promise the defendant that his cooperation would be kept secret and he did not have to testify, then the defendant did in fact cooperate to the extent agreed upon by disclosing the source of the drugs and actively helping to bring about the arrest of his suppliers. To sentence a defendant more severely because he refused to testify when he had been promised that he would not have to testify would be unconscionable.

At the time of sentence, the sentencing judge was obviously unaware of the fact that the defendant had been promised that he would not have to testify. Indeed, the court was under the mistaken impression that in refusing to testify the defendant had undergone a complete change of mind. In United States v. Robin, Slip Op. 951 (2d Cir. October 5, 1976), this court expressly held that:

"Where there is a possibility that sentence was imposed on the basis of false information or false assumptions concerning the defendant, an appeal will lie to this Court and the sentence will be vacated." at 5835.

The United States Supreme Court stated the rule in these terms:

"Misinformation or misunderstanding that is materially untrue regarding a prior criminal

record, or material false assumptions as to any facts relevant to sentencing, renders the entire sentencing procedure invalid as a violation of due process." Townsend v. Burke, 334 U.S. [736] at 740-1, 68 S. Ct. 1252.

At the very least, the defendant is entitled to a hearing to determine whether government agents did promise the defendant that he would not have to testify.

In passing, we note that the defendant presents a compelling view of the dangers confronting those who cooperate. For a court to compel a defendant to undertake the hazards of cooperating by increasing his sentence raise serious questions of fairness and due process.

CONCLUSION

For the reasons stated the order should be set aside and the case remanded for resentencing.

Respectfully submitted,

IRVING COHEN
Attorney for Defendant-Appellant
299 Broadway
New York, New York 10007

APPENDIX

DOCKET SHEET

to turn over his passports to A.U.S.A. Schall by 7/30/75

D. C. Form No. 100
CRIMINAL DOCKET

75CR 439

NEAHER,

TITLE OF CASE

THE UNITED STATES

TORNEYS

For U.S. SCHALL

VS.

X WILLIE NELSON

BEST COPY AVAILABLE

X JAMES DIGIOVANNI, a/k/a

"Pete" and

X STEPHEN DIGIOVANNI

For Defendant: #2

KORNBLUM ESQ.

Did distribute cocaine

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		7-30-75	Hutchinson Agency, James	5	
Clerk,		8-2-75	Ed. T. ... Di Giovanni		5
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
5/22/75	Before COSTANTINO, J.- Indictment filed
5/30/75	Before SCHIFFMAN, MAGISTRATE - Case called - all defts entered a plea of guilty. Case set down before Judge Neaheer 6/27/75 at 10 am for Motion Trial date. Deft. James Di Giovannie's old bail in the sum of \$25,000 with cash deposit cancelled and new bond to execute in the sum of \$25,000 secured by premise 72 Forrest Rd, Staten Island, New York 10306 owned by Joseph Di Giovannie and Emma (wife). Bond to be completed prior to June 6, 1975 at 4 pm.
6/27/75	By NEAHER, J.- Copy of Order releasing bail filed (NELSON)
6/27/75	Before NEAHER, J.- Case called - Defts and counsel present - Case adjd to 10/14/75 at 10:00 A.M. for status report - deft James DiGiovanni di

DOCKET SHEET

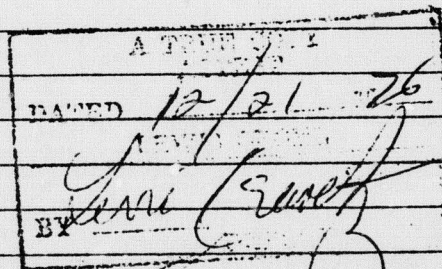
to turn over his passports to A.U.S.A. Schall by 7/30/75 //

600A 400

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
7/11/75	75 M 1133 is inserted in CR file.		
9/2/75	Notice of readiness for trial filed		
10/14/75	Before NEAHER, J. - Case called - Defts and counsel present - case adjd to 1/28/75 at 10:00 A.M. for trial		
1-28-76	Before NEAHER, J - case called - defts Giovanni (James & Stephen) present with counsels - case adjd to May 24, 1976 for trial.		
4-9-76	Before NEAHER, J - case called - deft NELSON & counsel I. Kornblum present - On motion of AUSA Schall the indictment is dismissed.		
4-9-76	By NEAHER, J - Order of dismissal filed (NELSON)		
5-21-76	Before NEAHER, J - case called - deft James Di Giovanni & counsel Irving Cohen present - deft withdraws previously not guilty plea and having been advised of his rights by the court enters a plea of guilty to counts 1, 3 & 6 - deft Stephen Di Giovanni & counsel L. Rubin present - deft withdraws previously entered not guilty plea and having been advised of his rights by the court enters a plea of guilty to count 3 - sentences adjd without date and bail contd as to each deft.		
7/23/76	Before NEAHER, J. - Case called. Deft & Counsel Blom present. Deft on his plea of guilty to count 3 is sentenced to 2 years imprisonment pursuant to Sect. 3651. Deft is to serve 6 mos. and the balance of 18 mos. is suspended placed on probation for 5 years with a S/P term of 3 yrs. Execution of sentence stayed until 8/6/76 at which time the deft is to surrender to U.S. Marshal, EDNY before 12 Noon. On motion of AUSA - T Schall counts 1, 2, 4, 5, & 6 are dismissed. (STEPHEN DI GIOVANNI)		
7/23/76	Case called. Deft & Counsel J. Cohen present. Deft on his plea of guilty to Cts 1, 3, & 6 is sentenced to 5 yrs imprisonment to be served concurrently as to each count with eligibility for parole at the end of 1 yr under Sec. 4205(b)(1) and a S/P term of 3 yrs execution of sentence stayed until 8/6/76 at which time the deft is to surrender to U.S. Marshal, EDNY before 12 Noon. The court recommends commitment at Danbury Correctional Facility. On motion of AUSA - Schall cts 2, 4, & 5 are dismissed. (JAMES DI GIOVANNI)		
7/23/76	Certified copies of Judgment & Commitment sent to Probation & U.S. Marshals. (JAMES DI GIOVANNI, STEPHEN DI GIOVANNI)		
7-29-76	Notice of motion filed pursuant to Rule 35 for reduction of sentence imposed as to deft Steven Di Giovanni.		
7-30-76	Notice of appeal filed (JAMES DI GIOVANNI)		
7-30-76	Docket entries and duplicate of Notice mailed to the court of appeals (JAMES DI GIOVANNI)		

DOCKET SHEET

DATE	PROCEEDINGS
8-2-76	By NEAHER, J - Order filed that the surrender date for service of the 6 months imprisonment heretofore imposed (STEVEN DIGIOVANNI) shall be adjourned from 8-6-76 to 8-20-76. Deft to surrender at the U.S. Marshal for the Eastern District of NY on 8-20-76 at or before 4:00 P.M. and it is further recommended by this court that the sentence shall be served at Danbury, Conn. Certified copies to Marshal.
8/6/76	Before PRATT, J. - Case called, Deft & Counsel present. Stay of execution of sentence to 8/13/76 at 10:00 a.m.
8-17-76	Judgment & commitment ret'd and filed - deft James Di Giovanni del. to Warden, MCC, NY.
8/25/76	Certified copies of Judgment & Commitment returned & filed. Deft delivered to MCC. (STEPHEN DI GIOVANNI).
9-27-76	By Consent filed dismissing the appeal as to deft James DiGiovanni (certified copy mailed to court of appeals as directed)
9-29-76	By NEAHER, J - Memorandum Order filed denying motion of deft STEPHEN DI GIOVANNI for reduction of sentence imposed - copy mailed to deft as directed.
11-19-76	Motion filed pursuant to Rule 35 for an order reducing or modifying the sentence and forwarded to chambers.
11-23-76	Stenographer's Transcript dated July 23, 1976 filed. (James Di Gi
12-8-76	By Neaheer, J - Order filed denying Rule 35 motions filed (deft James Di Giovanni) copies forwarded as indicated.
12-17-76	Notice of Appeal filed. (for reduction of sentence pursuant to Rule 35 that was denied by the Judge. Notice filed - Pro Se)
12/20/76	Record on appeal certified and mailed to the C of A. (JAMES GIOVANNI)



INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Necker J.

----- X
UNITED STATES OF AMERICA

- against -

WILLIE NELSON
JAMES DIGIOVANNI, a/k/a
"Pete" and
STEPHEN DIGIOVANNI,

Defendants.

INDICTMENT

Cr. No. 75CL439
(T. 21, U.S.C., §5841(a)(1)
and 846
T. 18, U.S.C., 52)

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 14th day of January, 1975 and the 29th day of March, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants WILLIE NELSON, JAMES DIGIOVANNI, a/k/a "Pete", and STEPHEN DIGIOVANNI did knowingly, wilfully and unlawfully combine, conspire, confederate and agree, together and with each other, to knowingly and intentionally distribute, and possess with intent to distribute, a quantity of cocaine, a Schedule II narcotic drug controlled substance, in violation of Section 841(a)(1) of Title 21, United States Code. (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 17th day of January, 1975, within the Eastern District of New York, the defendants WILLIE NELSON, JAMES DIGIOVANNI, a/k/a "Pete", and STEPHEN DIGIOVANNI did intentionally and unlawfully possess with intent

INDICTMENT

SCHEDULE II
of Section 841(a)(1) of Title 21, United States Code. (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 17th day of January, 1975, within the Eastern District of New York, the defendants WILLIE NELSON, JAMES DIGIOVANNI, a/k/a "Pete", and STEPHEN DIGIOVANNI did knowingly, intentionally and unlawfully possess with intent to distribute approximately one hundred and twelve (112) grams cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2).

INDICTMENT

- 2 -

COUNT THREE

On or about the 17th day of January, 1975, within the Eastern District of New York, the defendants WILLIE NELSON, JAMES DIGIOVANNI, a/k/a "Pete", and STEPHEN DIGIOVANNI did knowingly, intentionally and unlawfully distribute approximately one hundred and twelve (112) grams cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a) (1), and Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 24th day of March, 1975, within the Eastern District of New York, the defendants JAMES DIGIOVANNI, a/k/a "Pete" and STEPHEN DIGIOVANNI did knowingly, intentionally and unlawfully possess with intent to distribute approximately 0.07 grams of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a) (1), and Title 18, United States Code, Section 2).

COUNT FIVE

On or about the 24th day of March, 1975, within the Eastern District of New York, the defendants JAMES DIGIOVANNI, a/k/a "Pete" and STEPHEN DIGIOVANNI did knowingly, intentionally and unlawfully distribute approximately 0.07 grams of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a) (1), and Title 18, United States Code, Section 2).

INDICTMENT

- 3 -

COUNT SIX

On or about the 29th day of March, 1975, within the Eastern District of New York, the defendants JAMES DIGIOVANNI, a/k/a "Pete", and STEPHEN DIGIOVANNI did knowingly, intentionally and unlawfully possess with intent to distribute approximately four hundred and fifty (450) grams cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2).

A TRUE BILL.

FOREMAN.

DAVID G. TRIGLER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

DEFENDANT'S LETTER

James DiGiovanni, 03740
Pembroke Station
Danbury, Connecticut 06810

Attorney Irving Cohen
299 Broadway
New York, New York 10007

for: The Honorable Judge Edward R. Neaher

Sir:

I am writing you this letter as a supplement to the legal version of my Rule 35 being filed by my attorney. When I wrote you a personal letter prior to my sentencing, I tried to explain various misconceptions and discrepancies the prosecutor and agents had theorized about me. I also wanted to explain to you many statements in my pre-sentence report that I felt were erroneous and one sided. I do not believe either the prosecutors and agents reports to the court, or my pre-sentence report showed to you all the true and favorable aspects of my past. I believe that these reports concentrated only on the derogatory and negative aspects, and contained many erroneous theories on my lifestyle and alleged illegal activities.

Since you have my personal letter I do not think it is necessary to reiterate the favorable aspects of my past. I only wish that I could have had the opportunity to disprove the many discrepancies and misconceptions that were given to the court in order to judge me.

Sir, I would like to explain to you my reasons for not wanting to cooperate with Assistant prosecutor Schall. I believe my failure to cooperate had a large influence on the severity of my sentence. On the day I was arrested I agreed to tell the agents where I received the drugs from. I cooperated with the agents because of the agreement they made with me. They had promised me they wouldn't prosecute my wife or anybody else except my brother.

I did feel it necessary to allivate my wife and the other members of the household of any prosecution. I wanted to insure that these people, who were totally innocent of any crime, were not involved in my perdicament.. When I agreed to tell the agents where I received the drugs from, I was repeatedly told that I would not have to testify against anyone, or be involved in the trial of anyone arrested. I was also asured that no one would ever know that I supplied the information on the source of the drugs I brought, or would I be in court with anyone they arrested with the information I provided them. On the day of my bail hearing I saw the two Liftshitz brothers in court. They had been told by either the agents or the prosecutor that I was responsible for supplying the information on where I bought the drugs. This made me very dubious of the sincerity of the agents.

After I was released on bail, I was confronted with one of the most difficult decisions of my life, whether to cooperate or not,

When I met with the Ass't prosecutor he told me that I would have to testify against these two brothers in a grand jury and later, after an indictment, at thier trial. I was told that by cooperating fully with the Government I would be helping myself immensely in getting a recommendation for a lienient sentence. I was not told that if I decided not to cooperate that this could result in a recommendation for punishment because of my refusal.

On two occasions when I went to visit my lawyers, the Lifshitz brothers and another person were waiting near his office to talk to

DEFENDANT'S LETTER

men were not friends of mine, just people I met through other people. They told me that they were quite angry at me for giving the agents information. They expressed to me that if I cooperated in helping prosecute them that they were sincere in their threats of retribution towards my wife and I. This made me very dubious of the sincerity of the agents.

After I was released on bail, I was confronted with one of the most difficult decisions of my life, whether to cooperate or not,

When I met with the Ass't prosecutor he told me that I would have to testify against these two brothers in a grand jury and later, after an indictment, at their trial. I was told that by cooperating fully with the Government I would be helping myself immensely in getting a recommendation for a lenient sentence. I was not told that if I decided not to cooperate that this could result in a recommendation for punishment because of my refusal.

On two occasions when I went to visit my lawyers, the Lifshitz brothers and another person were waiting near his office to talk to me. These men were not friends of mine, just people I met through other people. They told me that they were quite angry at me for giving the agents information. They expressed to me that if I cooperated in helping prosecute them that they were sincere in their threats of retribution towards my wife and I.

ASSISTANT UNITED STATES ATTORNEY'S
LETTER OF NOVEMBER 30, 1976 REPLYING
TO DEFENDANT'S ALLEGATIONS

TRP:AAS:cj
F.#751,804

November 30, 1976

Honorable Edward R. Neaher
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. James DiGiovanni
Criminal Docket No. 75 CR 439

Dear Judge Neaher:

We have received copies of papers submitted in connection with James DiGiovanni's motion for reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. Please be advised that the United States takes no position as to whether or not Mr. DiGiovanni's motion should be granted. We do, however, wish to respond to two statements made by Mr. DiGiovanni in his letter to the Court, a copy of which is annexed to the motion papers.

1. On page one (1) of his letter, Mr. DiGiovanni states: "I was not told that if I decided not to cooperate that this could result in a recommendation for punishment because of my refusal."

We wish to advise the Court, that prior to the time Mr. DiGiovanni pleaded guilty, this office advised his attorney that although we would not recommend any specific sentence, we would bring to the Court's attention, prior to sentencing, Mr. DiGiovanni's refusal to cooperate.

2. On page two (2) of his letter, Mr. DiGiovanni states that he believed that if he cooperated with the Government he "would be obligated to continue as an informer and buyer."

ASSISTANT UNITED STATES ATTORNEY'S
LETTER OF NOVEMBER 30, 1976 REPLYING
TO DEFENDANT'S ALLEGATIONS

Hon. Edward R. Neaher

-2-

November 30, 1976

In this connection, as we advised the Court at the time of sentencing, the cooperation which the Government was seeking was Mr. DiGiovanni's grand jury and trial testimony with respect to the individuals who sold him the cocaine with which he was arrested. If he had cooperated, Mr. DiGiovanni would have been neither required nor obligated to associate with people involved in narcotics trafficking.

Very truly yours,

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By:

Alvin A. Schall
Assistant U.S. Attorney
Deputy Chief, Appeals Division

cc:

Irving Cohen, Esq.
Geller & Cohen, Esqs.
299 Broadway
New York, New York 10007

A.A. Schall - 11/29/76

ORDER OF THE COURT

FILED

IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEC 9 1976 ★

----- TIME X.M. -----

P.M. -----

UNITED STATES OF AMERICA

:

-against-

:

75 CR 439

JAMES DiGIOVANNI,

:

Defendant.

:

----- -X

ORDER

The above-named defendant having, through his attorney, moved for a reduction of sentence pursuant to Rule 35, F.R.Crim.P. on November 19, 1976, and the court having considered the reasons advanced in support of the motion, finds no sufficient grounds for reducing or modifying the sentence imposed. The application is therefore denied, and it is

SO ORDERED.

The Clerk of Court is directed to forward copies of this order to the United States Attorney for this District; to the Chief Probation Officer for this District; to the defendant's attorney, Irving Cohen, Esq., 299 Broadway, New York, N.Y. 10007; and to the defendant, James DiGiovanni,

App.-13

(4)

ORDER OF THE COURT

#03740, Pembroke Station, Danbury, Connecticut 06810.

Edward R. Nealey

U. S. D. J.

Dated: Brooklyn, New York
December 8, 1976

COPY RECEIVED
MAR 9 1977
ROBERT B. FISKE JR.
U.S. ATTORNEY
SO. DIST. OF N.Y.